



PLANNING COMMISSION STAFF REPORT JULY 12, 2012

Project:	ANNUAL REVIEW OF THE PACIFIC COMMONS DEVELOPMENT AGREEMENT (PLN2012-00150)
Proposal:	To consider a City Manager's Report on an Annual Review of the Pacific Commons Development Agreement.
Recommendation:	Find the developer in compliance with the provisions of Development Agreement.
Location:	Westerly of Interstate-880, between Auto Mall Parkway and Cushing Parkway in the Bayside Industrial Community Plan Area. APN's 531-185-5-7, 531-185-4-5, 525-1326-3, 525-1326-5, 525-1326-6, 525-1326-8, 525-1326-7-1, 525-1326-9 (vesting Map Tracts 7200 and 7458) (See aerial photo next page)
Area:	Approximately 840 acres
People:	Kurt Fuller, Prologis, Applicant Prologis, Developer, Successor of Development Agreement Clifford Nguyen, Staff Planner (510) 494-4769; cnguyen@fremont.gov
Environmental Review:	This annual review is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15378 in that the activity is not defined as a "project."
General Plan:	Tech Industrial; Open Space – Resource Conservation/Public
Zoning:	P-2000-214, Planned District

EXECUTIVE SUMMARY

On May 9, 2000, the City Council approved a Development Agreement entitled "2000 Amended and Restated Development Agreement between the City of Fremont and Catellus Development Corporation" (hereinafter "2000 DA"). The 2000 DA required the developer to submit a compliance evaluation letter as part of each annual review of the 2000 DA (enclosed as "Informational 1"). Pursuant to state law, and in accordance with the terms of the 2000 DA, this report from the City Manager must be presented to the Planning Commission to determine if the developer is in compliance with the requirements and obligations of the 2000 DA. Staff recommends that the Planning Commission find that the developer in compliance with the provisions of the 2000 DA for the 2010-2012 review period.



Figure 1: Aerial Photo (2009) of Project Site and Surrounding Area.



SURROUNDING LAND USES:

- North: I-880
- South: Vacant, Ecological Preserve
- East: Commercial, Industrial
- West: Open Space

BACKGROUND AND PREVIOUS ACTIONS

The original development plan which included a mix of industrial, commercial and retail uses for the 877-acre master planned area known as Pacific Commons was originally completed in 1987. The land as initially envisioned was not developed, and in 1996 a Major Amendment and Development Agreement (the “1996 Development Agreement”) were approved for the Pacific Commons Planned District Master Plan to allow 8.3 million square feet of research and development uses on an approximately 662-acre portion of the land, with a set-aside of 160 acres of wetland preserve within the overall 877-acre area.

In 1998, the City approved the Pacific Commons Mitigation Monitoring and Reporting Plan (MMRP) in furtherance of the conditions for the 1996 approvals, which largely included traffic and wetlands impact mitigation measures.

In 2000, in fulfillment of the MMRP, federal authorities required wetland preservation and mitigation of 390 acres rather than 160 acres. Because of this major change to the developable area, major amendments to the Planned District and 1996 Development Agreement were proposed and approved to modify and refine the Pacific Commons development project to include the federal wetland preservation requirements and mitigation, which were adopted under a Supplemental Draft and Final Environmental Impact Report (SEIR). The entire 1996 Development Agreement was amended and restated by the current 2000 DA. The approvals resulted in a significant reduction in the portion of the Pacific Commons development area from 662 acres to 373 acres, and the compaction of allowable retail and industrial office uses totaling 8.3 million square feet concentrated on the north side of the Master Plan Area and a set-aside of the wetland preserve to the south. The modified and refined development project for the t site, as set forth and delineated in the 2000 DA, provided for the following major improvements:

- Restoration and preservation of a significantly expanded area within the project site (approximately 390 acres) as an ecological (wetland) preserve;
- A significant reduction in the developable project site for private uses and ancillary public improvements from approximately 669 acres to 373 acres, and the compaction of allowable retail and industrial office uses totaling 8.3 million square feet concentrated on the north side of the Master Plan Area and a set-aside of the ecological preserve to the south;
- Development of an approximately 47-acre area on the northwestern portion of the project site for a stormwater treatment facility;
- Construction of the Cushing Parkway causeway through the project site with a partially elevated design that would minimize ecological impacts from the roadway footprint and allow species movement under the elevated roadway; and,
- Extension of Pacific Commons Boulevard from Curie Street to Auto Mall Parkway.

Three subsequent amendments to the 2000 DA were adopted which: (i) extended the completion date for Cushing Parkway (now completed); (ii) limited drive-thru restaurants to two unique establishments (one of which now is In-N-Out Burger); (iii) extended the term of the DA for an additional five years (expires October 17, 2019); and (iv) provided earlier completion of the Municipal Parcel Access Improvements at the current Auto Mall Parkway westerly terminus (under construction permit review).

In 2010, the current Pacific Commons entitlement (Table 1) was finalized with approval of Planning Area 5 retail and entertainment uses. An additional supplement to the EIR was certified and included mitigation measures to address new significant impacts related to greenhouse gas emissions and regional air quality, which were implemented during the 2010-2012 review period during construction of Target and Cinemark Theater (see “Environmental Review” for further discussion).

Table 1 identifies the status of development at Pacific Commons. A map showing the Planning Areas is enclosed (Informational 1). The ecological preserve (wetland dedication) and other offsite improvements for construction of Cushing Boulevard, stormwater treatment facility, and habitat restoration have been completed.

Table 1 - Pacific Commons Development Plan 2012				
	Acres	Building (SF)	Current Approved Use	Status
Catellus Owned Land in Pacific Commons				
Catellus Planning Areas 1, 2,3 and 4 – Existing Major Retail District	79	863,000	Retail	Built
Catellus Planning Area 5 (“The Block”)	27	321,000	Retail/Entertainment	½ Built
Catellus Planning Area 6	23	160,000	Automall and Office	2/3 Built
Existing Nobel Dr Area 7	76	1,122,485	Office/R&D	Built
Cisco Owned Land within Pacific Commons				
Cisco Planning Area 8, 9, 10 and 11	133	(3,398,000)	Office/R&D	Vacant

PROCEDURE FOR TONIGHT’S HEARING

At tonight’s hearing, the Planning Commission is asked to consider the City Manager’s Report on the 2000 DA pursuant to the provisions of the Fremont Municipal Code (FMC) Section 8-7112 (Periodic review) and determine if the developer has complied in good faith with the terms and conditions of the 2000 DA for the period under review (from 2010 to 2012), based on substantial evidence presented by the developer and attached hereto.

DEVELOPMENT AGREEMENT ANALYSIS:

Development Agreement/City Interests: The general intent of a development agreement is to strengthen the public planning process; encourage private participation in comprehensive planning; and, reduce the economic costs of development. It is a tool for establishing a vested right to proceed with development in conformance with the policies, rules, and regulations in effect at the time of approval. A development agreement provides a developer with assurances for a specified length of time that his/her project may proceed as originally approved, and not be affected by future changes in land use regulations. In many cases, and in exchange for this assurance, a developer agrees to certain City interests for public use as a condition of the agreement.

The developer has provided a compliance letter that is enclosed (Informational 2). Table 2 below illustrates the 2000 DA's rationale, including the project's current compliance with each interest.

Table 2 - 2000 Development Agreement (As Amended)	
City Interest	Developer's Action/Status
A. Restoration and preservation of a significantly expanded area within the project site (approximately 390 acres) as an ecological preserve;	The restoration and preservation of the ecological reserve has been completed.
B. Compact allowable retail and industrial office uses totaling not more than 8.3 million square feet concentrated on the north side of the Master Plan Area and a set-aside of the wetland preserve to the south;	Compaction of the developable area on the north side of Pacific Commons project site has occurred and is largely two-thirds built out with industrial, office and retail uses.
C. Development of an approximately 47-acre area on the northwestern portion of the project site for a stormwater treatment facility;	The stormwater treatment facility (or pond) has been completed and accepted.
D. Construction of the Cushing Parkway causeway through the project site with a partially elevated design that would minimize ecological impacts from the roadway footprint and allow species movement under the elevated roadway;	The Cushing Parkway improvements and causeway have been completed and accepted.
E. Extension of Pacific Commons Boulevard from Curie Street to Auto Mall Parkway.	Pacific Commons Boulevard is now extended even further south from Automall Parkway, through Curie Street, to Bunche Drive.
F. Provide earlier completion of the Municipal Parcel Access Improvements at the current Automall Parkway westerly terminus.	Staff is currently reviewing construction drawings of the Municipal Parcel Access Improvements (now underway).
G. Option to purchase the Municipal Parcel on Automall Parkway as an approximately 40-acre area at the northwesterly corner of the project site as a potential City park, flood control facility and/or transportation center.	Option was exercised and City purchased approximately 40 acres.
H. Option Agreement requires Catellus to grant to the City the exclusive right to purchase, for one dollar (\$1.00), approximately two acres of a parcel at the westerly terminus of Stevenson Boulevard, known as the Stevenson Parcel, for a municipal purpose	Option was exercised and in January 2007, a grant deed was recorded for the two-acre parcel.
I. The 2006 Fire Station Promissory Note was an agreement in which Catellus would pay the City \$910,000 over five years to help defray the cost of constructing Station 11.	While the construction of Fire Station 11 has been completed, payment from the developer was not due during the 2010-2012 review period as the Station was not staffed. Currently, the Station remains "browned out" due to budget constraints.

FINDINGS FOR APPROVAL

Pursuant to FMC Section 8-7112, if the Planning Commission finds the developer to be in compliance with the DA, the review is completed. If the Planning Commission finds and determines on the basis of substantial evidence that the developer has not complied in good faith with the terms and conditions of the DA during the period of review, the Planning Commission must forward a recommendation to the City Council for enforcement action. In considering the matter, the City Council may elect to modify or terminate the DA.

In order for the Planning Commission to find the applicant in compliance with the DA, the applicant must clearly demonstrate that they have complied in good faith with the terms of the agreement for the period under review. Based on the analysis in the “Development Agreement Terms” section, above, staff recommends the Planning Commission find that the developer has demonstrated on the basis of substantial evidence that they have complied in good faith with the requirements of the 2000 DA over the last year.

ENVIRONMENTAL REVIEW

The Pacific Commons EIR (SCH#96052016) and 2000 Supplemental EIR (“2000 SEIR”) were previously certified for the Pacific Commons project. In 2003, an Addendum to the 2000 SEIR was adopted for Planning Areas 1-4. In 2010, a second Supplemental EIR (“2010 SEIR”) was certified for the addition of retail and entertainment uses (Target and Cinemark Theater) in Planning Area 5.

The current action required of the Planning Commission is an annual review of the 2000 DA for compliance. The annual review is not considered a project pursuant to CEQA Guidelines, Section 15378. Therefore, no additional environmental review is applicable.

A Mitigation Monitoring and Report Plan (MMRP) for the Pacific Commons project was adopted by the City Council in conjunction with prior approvals. The MMRP lists every mitigation measure required by the City and other public agencies, identifies the time at which the mitigation measure is to occur, the responsible agency for approving the mitigation measure and an area for City staff to sign when each mitigation measure is fulfilled. Each year, the developer submits a status report on the mitigation measures. The status report lists those project mitigation measures that require formal approval. For each mitigation, the status report indicates whether the mitigation is completed (and refers to the evidence to support that statement), not completed, or an ongoing activity that will be required until the project is completed. During the 2010-2012 review period, the MMRP is applicable and largely related to the development of the Pacific Commons Planning Area 5 (“The Block”), which is enclosed for informational purposes only (Informational 2).

PUBLIC NOTICE AND COMMENT:

Public hearing notification is applicable. A total of 393 notices were mailed to owners and occupants of property within 300 feet of the site. The notices to owners and occupants were mailed on June 29, 2012. A Public Hearing Notice was published by *The Argus* on June 26, 2012.

ENCLOSURES:

Informational Enclosure:

Informational 1 [Site Map of Pacific Commons Planning Areas](#)
Informational 2 [June 14, 2012 Prologis Compliance Evaluation Letter](#)
Informational 3 [MMRP – Planning Area 5](#)

Supplemental Hearing Materials (not enclosed; available at hearing):

2000 Amended and Restated Development Agreement between the City of Fremont and Catellus Development Corporation

RECOMMENDATION:

1. Hold public hearing.
2. Find that the review of the 2000 DA is not subject to CEQA pursuant to CEQA Guidelines Section 15378 in that the activity is not defined as a “project.”
3. Find on the basis of substantial evidence that the developer has complied in good faith with the terms and conditions of the 2000 DA, as amended thereto, for the period under review (year 2010-2012).

Existing Zoning
Shaded Area represents the Project Site

